UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CONSORZIO DEL PROSCIUTTO
DI SAN DANIELE
v. **C.A. No.: 07-039ML**
DANIELE, INC.

DEFENDANT, DANIELE, INC.'S, OPPOSITION TO PLAINTIFF, CONSORZIO DEL PROSCIUTTO DI SAN DANIELE'S, MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant, Daniele, Inc., requests that plaintiff's motion for partial summary judgment relative to defendant's alleged breach of paragraph 5 of the settlement agreement dated March 25, 2005 be denied as a matter of law. This is not a case of a missing trademark and/or a *de facto* trademark as alleged by Consorzio. There is nothing remotely similar or remotely confusing about the five (5) trademarks being used by defendant and the certification mark of plaintiff, which is "*PROSCIUTTO DI SAN DANIELE.*"

The Consorzio concedes that its argument all along that the five (5) different trademarks used by defendant were not true trademarks because they were descriptive of the prosciutto product is an argument without any legal basis as the Consorzio presented no case law to the court to support its position and, in fact, conceded that the five (5) names are valid trademarks for the purpose of the motion. Needing something else to support this lawsuit, the Consorzio is now claiming that five (5) different trademarks are not permitted by the agreement so therefore defendant has breached paragraph 5 of the settlement agreement by not adopting one (1) trademark. Defendant has in good faith complied with the terms of the settlement agreement and has not materially breached the settlement agreement. There is no confusion between plaintiff's and defendant's trademarks.

For the reasons set forth in the attached memorandum of law in support of defendant's objection to plaintiff's motion for partial summary judgment, this court should deny the Consorzio's motion for partial summary judgment and should grant defendant's cross-motion for summary judgment.

Pursuant to LR CV 7, defendant is requesting an oral argument on the dispositive motions filed in this case. Defendant estimates a total of one (1) hour for all arguments.

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CERTIFICATION

The undersigned hereby certifies that this document has been filed electronically on this 29th day of June, 2007 and is available for viewing and downloading to the ECF registered counsel of record:

Via Electronic Service/ECF:

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CERTIFICATION

The undersigned hereby certifies that a true copy of the within document was forwarded on this

29th day of June, 2007, via first class mail, postage pre-paid, to the following attorneys of record:

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